# In the Supreme Court of the United States

OCTOBER TERM, 1975

**No. 75-631**

GEORGE ALDER, et al.,
*Petitioners,*

vs.

JACK SANDSTROM, Director, Department of Corrections and Rehabilitation, Dade County, Florida, et al.,
*Respondents.*

## BRIEF OF WEST FLAGLER ASSOCIATES, LTD. IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF FLORIDA

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## BRIEF OF WEST FLAGLER ASSOCIATES, LTD. IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF FLORIDA

The petition for certiorari attempts to leave the impression that the petitioners were tried in absentia and that they were adjudged in contempt of court and incarcerated without a hearing and opportunity to be heard, thus depriving them of due process of law.

A mild characterization of the position taken by the petitioners would be that it is completely contrary to the record which clearly discloses that they participated in a trial, offered testimony and cross examined witnesses prior to being adjudged in contempt of court. It was only after an extended hearing on July 7, 1975, and affirmance of the order of July 3, 1975, and admissions in open court by petitioners that they had knowledge of the order and that their violations were willful and deliberate that they were adjudged in contempt.

Because of the manner in which the petition for certiorari is presented and the difficulty in gleaning from it what, in fact, occurred, this respondent finds it necessary to restate what was involved and the sequence of events leading up to the order complained of.[1]

## RESTATEMENT OF THE CASE

West Flagler Associates, Ltd. is the owner and operator of one of three greyhound racing facilities located in Dade County, Florida. It instituted suit against the petitioners and others in the Circuit Court of Dade County, Florida, seeking a temporary and permanent mandatory injunction requiring the petitioners and others to comply with valid existing contracts for the furnishing of greyhounds to race at Flagler Kennel Club for the race meet scheduled to commence July 3, 1975.

Upon the filing of the suit the State of Florida and Metropolitan Dade County moved to and were allowed to intervene in the proceedings as parties plaintiff.

The sworn complaint in this case and the relief therein sought is traditionally one within the realm of equity jurisdiction and the relief therein prayed for is traditionally granted by a court of equity.

The prayer of the sworn complaint was (a) that a temporary injunction issue without notice against the defendants from removing the dogs under contract to Flagler from the jurisdiction, (b) that the individual defendants having contracts with the plaintiff to supply dogs be ordered and directed by temporary mandatory injunction

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1. Respondent in this brief, when referring to the appendix of the petitioners' brief, will refer to it as PA ____, and the appendix to this brief will be referred to as RA ____.



to perform their contracts, (c) that the defendants be required to show on a short day to be fixed by the court why the court should not decree specific performance of the contracts and (d) in the event of refusal to perform as ordered by the court that the dogs be sequestered. Other and additional relief was sought which is not material to the instant proceeding.

The sworn complaint in substance briefly alleged as follows (RA 25):

(a) That plaintiff was a limited partnership organized and existing under the laws of the State of Florida and the operator of Flagler Kennel Club under a license granted by the State of Florida.

(b) That Flagler was licensed to operate from July 3, 1975, through September 4, 1975, and from November 1, 1975, to January 9, 1976, and from May 1, 1976, to July 2, 1976. The period of the contracts between Flagler and the kennel owners and operators encompassed the dates in question for which Flagler had been granted a license by the State of Florida. That the contracts were identical as to form and copies of three of the form contracts were attached to the complaint with the allegation that the balance of the executed contracts would be produced in court at the proper time.

(c) That the several kennel owners by their contracts expressly covenanted and agreed not to take any action which would be detrimental to the track operator and greyhound racing, specifically that he would not "directly or indirectly * * * participate in, aid, encourage, or do any act or thing to impede, delay, interrupt, disrupt, or bring about a temporary or permanent cessation or suspension of racing during any racing meeting within the period of time covered by this contract * * *."

(d) That in the last racing year the State of Florida received from Flagler in excess of $5,700,000.00 in tax revenues. That under Rule 7E-2.26(1) of the Department of Business Regulation (the state regulatory body), the greyhounds had to be schooled and that the kennel owners and operators were required to present their dogs for schooling in June for the race meet commencing July 3, 1975. On June 10, 1975, the defendants sent to the plaintiff a notice, a copy of which was attached to the complaint, advising that they would not present their dogs for schooling, knowing that such refusal would prevent Flagler from conducting its race program under its license from the State of Florida, opening July 3, 1975.

(e) That unless the defendant kennel owners having contracts with Flagler were compelled to perform their contracts Flagler would not be able to operate its race program commencing on July 3, 1975, and that there was no reasonable expectation that the bulk of such program could be conducted. The complaint alleged that the defendants by their contracts were obligated to supply a chattel of unique character, namely racing greyhounds which were not obtainable in the open market and that the plaintiff would be unable to obtain contracts from others for the supply of racing greyhounds.

(f) That plaintiff's business depended upon performance of said contracts by said defendant kennel owners and their failure to comply with these agreements would cost the plaintiff the loss of its business and deny it the right to conduct its business as authorized by the State of Florida.

(g) Paragraph 21 alleges the irreparable injury that would be suffered by the plaintiff, the loss of revenue to the state, the adverse effect upon the labor force in Dade County and loss of revenue to such employees, and



that each day lost could never be replaced in view of the competition and date assignments made to the other dog tracks in the Dade and Broward County areas.

(h) That the dogs which were under contract were being kenneled in Dade County, Florida, and that if the defendant kennel owners received notice of any application to restrain their removal from the jurisdiction that the kennel owners would cause the dogs to be removed from the jurisdiction, thereby frustrating compulsory performance of the contracts to the irreparable damage of the plaintiff.

Pursuant to the sworn complaint, the court on June 30, 1975, without notice, issued a temporary injunction which was limited to removal of the dogs from the jurisdiction (RA 35). At the time of the issuance of that temporary injunction, the court also ordered a hearing to be had on July 3, 1975, for the purpose of determining whether or not a temporary mandatory injunction should issue as prayed.

On July 3, 1975, some of the defendants and their counsel appeared as directed and announced that they had filed a petition for removal to the federal court and that they would not participate in the hearing and requested leave to withdraw, which was granted.

The federal court at 5:55 P.M. on July 3, 1975, of its own motion while the state court was still in session, remanded the cause to the state court. The lower court at 6:10 P.M. on July 3, 1975, and after the remand, entered an order granting the temporary mandatory injunction (RA 41). That order, after making findings of fact and determining that irreparable damage would result if the relief prayed was not granted, directed immediate compliance by the dog owners with the contracts by filing of

entries not later than July 4, 1975, at 10:00 A.M. It further provided that in the event of the refusal of the owners to file entries that Perrine Palmer take custody and control of the dogs for the purpose of running them for the account of the owners and fixing July 11, 1975, as the date upon which the defendants were required to file their answers to the complaint.

The kennel owners failed and refused to submit their entries as required by the order of July 3, 1975, and Perrine Palmer attempted to take custody, control and management of the dogs. Because of the number of the dogs and inability to get adequate help, a hearing was had at the home of the circuit judge at the instigation of the receiver on July 5, 1975. Custody of the dogs was directed to be returned to the kennel owners under the supervision of the receiver. At the said time the court informed the defendants that a contempt hearing would be had on Monday, July 7, 1975, commencing at 12:00 Noon, and that prior to such contempt hearing the court would hear and entertain any motions or evidence which the defendants might care to adduce.

The defendants, upon the morning of July 7, 1975, filed a notice of interlocutory appeal to the District Court of Appeal for the Third District of Florida.[2]

The defendants appeared before the trial court on July 7, 1975, and presented and argued several motions, (a) a motion to dissolve the injunction, (b) motions to dismiss, (c) motions to quash and (d) motion challenging jurisdiction of the court, alleging that jurisdiction had been lost by the filing of the notice of appeal to the Third District Court, which were, in the course of the hearing, denied.

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2. The District Court of Appeal in Florida are intermediate appellate courts.



Early in that trial proceeding it was ascertained by the court which of the defendants were present in court. Their names were read by the clerk and they responded as being present (RA 44).

West Flagler, the State of Florida and Dade County then proceeded to call the same witnesses and present the same evidence which had been given at the hearing of July 3, 1975 (in which the defendants elected not to participate). The defendants' attorneys cross examined the plaintiff's witnesses, challenged the documentation and offered evidence on their own behalf.

The court at the conclusion of that hearing reaffirmed and republished the order of July 3, 1975. The court then considered the allegations of contempt by the individual kennel owners as scheduled by the court on July 5, 1975, for July 7, 1975.

The individual kennel owners were called to the stand and each was interrogated concerning knowledge of the order of July 3, 1975, and their willful refusal to comply with it. Most of the defendants unequivocally, if not arrogantly, acknowledged that they had knowledge of the order and that they had willfully and deliberately failed and refused to comply with that order.

The dog owners so admitting their willful and deliberate violation (with the page of the transcript of July 7, 1975) are: F. B. Stutz (218), James L. Frey (235), Charles M. Leavy (261), Wayne Strong (272), Woodrow Blackwell (294), George Alder (299), Charles R. Holzschuher (303), Jack Wilson (306, 307), Pat Dalton (309), Lester Cole (312), Richard Jordan (320), Chester Culbreath (323), J. E. O'Donnell (327), Paul Haenel (331), Earl Hall (339), Steven Merlock (349), C. O. Means (354), Francis Fulginiti (358), Paul J. Discolo (384, 385), and J. W. Ewalt (388).

Illustrative of their responses is the testimony of but some of the defendants (RA 47-50).

Some of the owners who were adjudged in contempt of court equivocated concerning knowledge of the order and their deliberate violation of it. The owners as to whom there was any question of their knowledge of the order were acquitted of the charge. The contempt order was formally entered July 8, 1975 (RA 51).

Following the court's oral announcement on July 7, 1975, when it reaffirmed its order of July 3, 1975, and found the dog owners in contempt, petitioners, pursuant to the notice of interlocutory appeal filed on the morning of July 7, 1975, obtained an emergency hearing in the District Court of Appeal, Third District, on July 8, 1975. They there sought a stay of the proceedings solely upon the ground that the Circuit Court had lost jurisdiction with the filing of the notice of appeal. No application was ever made to either the Circuit Court or in the Court of Appeals for a supersedeas.

The Court of Appeals, following that argument and on July 8, 1975, denied petitioners' application for stay (RA 54), and on July 9, 1975 entered an order advancing the cause (RA 55).

Petitioners then went immediately to the Supreme Court of Florida and obtained ex parte from one of the justices a writ of habeas corpus on July 10, 1975 (RA 36).

The Supreme Court of Florida on July 10, 1975, directed the respondents to make return to the writ on July 16, 1975, and set the cause for hearing on July 21, 1975 (PA 58).

Respondents filed a motion to quash and discharge the writ of habeas corpus and oral argument was had in the Supreme Court of Florida on July 21, 1975.



On July 21, 1975, the Supreme Court of Florida entered its opinion and order in *Wilson* v. *Sandstrom,* 317 So. 2d 732 (Fla. 1975). In the course of that opinion the Supreme Court of Florida said:

> "At the hearing on July 7, 1975, each kennel owner was called to the stand and interrogated concerning his knowledge of the order and whether he had willfully and deliberately refused to comply with the order of July 3, 1975. On July 8, 1975 the kennel owners were adjudged guilty of contempt and 18 of them were incarcerated in the Dade County penal facilities. These are the petitioners in the habeas corpus proceeding."

The Supreme Court of Florida in the closing paragraphs of its opinion said:

> "In summary, we hold that all of the orders entered by the trial court were proper under the circumstances and without error. The writ of habeas corpus is discharged and the petitioners therein are remanded to the custody of the respondent, such incarceration to begin on Tuesday, July 22, 1975, at 5:00 P.M."

Petitioners filed an extended petition for rehearing (PA 22). The Supreme Court of Florida on July 29, 1975, denied the petition for rehearing, saying:

> "Our opinion is not res judicata to the main proceeding of this cause and is without prejudice for the petitioners and appellants to raise in the main proceeding the issues presented herein, including claims for damages for an improperly issued temporary injunction and the enforcement thereof."

Following the opinion of the Supreme Court of Florida directing discharge of the writ of habeas corpus and order-

ing petitioners to return for incarceration, the dog owners apparently concluded that discretion was the better part of valor and elected to resume racing their dogs as provided for in the contracts and thereupon were released from the order of incarceration. They resumed racing their dogs for the balance of the Flagler meeting which terminated in September 1975.

## REASONS WHY THE WRIT SHOULD NOT BE GRANTED

### Summary of Argument

A. THE PETITION FOR THE WRIT RAISES NO SUBSTANTIAL FEDERAL QUESTION OF NATIONAL IMPORTANCE UNDER 28 U.S.C.A. § 1257(3).

B. THE OPINION AND JUDGMENT OF THE SUPREME COURT OF FLORIDA DISCHARGING THE WRIT OF HABEAS CORPUS PREVIOUSLY ISSUED WITHOUT NOTICE DID NOT CONSTITUTE A FINAL JUDGMENT AND IS NOT REVIEWABLE BY CERTIORARI.

C. THE OPINION AND ORDER OF THE SUPREME COURT OF FLORIDA DISCHARGING THE WRIT OF HABEAS CORPUS WAS A DISCRETIONARY ACTION AND THIS COURT WILL NOT AS A MATTER OF LAW REVIEW DISCRETIONARY ORDERS ON CERTIORARI.

D. THE ORDER OF THE SUPREME COURT OF FLORIDA DISCHARGING THE WRIT OF HABEAS CORPUS HAS BECOME MOOT AND, THEREFORE, IS NOT REVIEWABLE ON CERTIORARI.



## ARGUMENT

### A. The Petition for the Writ Raises No Substantial Federal Question of National Importance Under 28 U.S.C.A. § 1257(3).

The initial injunctive order which was issued without notice and in accordance with state law only enjoined the petitioners from removing their dogs from the jurisdiction of the court. This was necessary and was done pursuant to the sworn allegations of the complaint and testimony for the obvious reason that the dogs were a unique commodity and if they were to be removed from the jurisdiction of the court they could not be replaced or obtained elsewhere. The end result of that would be that any further orders directed to the dogs' owners would have been virtual nullities and the jurisdiction and power of the court would have been circumvented by simply removing the dogs from the jurisdiction of the court.

Not one of these suppliers of greyhounds sought to procure the cancellation of his or her contract with the track. Not one of such suppliers sought to be released from his or her contract. These suppliers sought the court's sanction of their unlawful combination and conspiracy to collectively refuse to supply the greyhounds, thereby placing the track and the state under severe economic pressure in an effort to force the track to pay a greater price for the use of the greyhounds. Such a combination or conspiracy is unlawful under the laws of the State of Florida. Section 542.05, Fla. Stat. provides in part as follows:

> "(1) Any person who shall or may become engaged in any combination of capital, skill or acts by two or more persons, firms, corporations or associations

of persons or of either two or more of them, for either, any or all of the following purposes:

"(a) To create or carry out restrictions in trade or commerce or aids to commerce, or to free pursuit of any business authorized or permitted by the laws of this state;"

When the injunctive order was entered on June 30, 1975, it was served upon counsel for the defendants and notice of an injunctive hearing on July 3, 1975, was given.

Counsel for the defendants, or at least some of them, appeared before the court and announced that they had that day filed a petition for removal of the cause to the federal court and refused to participate further in the proceedings. This petition for removal "on behalf of the defendants" (PA 77) constituted a general appearance. With leave of court they left the courtroom and the court proceeded to hear evidence and testimony offered by the plaintiff in support of the application for mandatory temporary injunction. Later the same day the federal district court of its own motion, and prior to any action by the state court, remanded the cause to the state court. The order of remand (PA 85) recites that the cause was remanded, "* * * it appearing from the face of the petition that there is no jurisdiction under Title 28, U.S.C., Section 1441." Apart from the order of the district court remanding the cause, it is apparent upon the record that there never was any valid removal in the first instance as the mandatory requirement of the filing of a removal bond was not complied with. Petitioners did not file a bond; they filed in lieu of a bond a cashier's check (RA 40). A cashier's check is not a bond and does not satisfy the requirement of the statutes relating to removal. *Proteus Foods and Industries, Inc.* v. *Nippon Reizo Kabushiki Kaisha* (D.C.N.Y.), 279 F. Supp. 876.



The injunctive order of July 3, 1975, while predicated upon testimony and evidence adduced between the voluntary departure of petitioners' counsel and the entry of the order of remand by the federal district court, was not void and it was not entered until after the remand. Furthermore, the order of July 3, 1975, in nowise involved any contempt adjudication. The order of July 3, 1975, simply ordered and directed the defendants to file the entries for their dogs with the racing secretary of Flagler no later than 10:00 A.M. on July 4, 1975, for races to commence on July 5, 1975. It also only further provided that if they did not voluntarily file their entries that Perrine Palmer would take possession and operate the dogs for the account of the respective owners.

Because of physical limitations upon the receiver and the number of dogs involved, the receiver obtained a hearing with the court at his home on July 5, 1975, at which time, with all counsel present, the court directed that control of the dogs, subject to the supervision of the receiver, be returned to the dog owners.

On July 5, 1975, the attorneys for Flagler also served on the defendants' counsel a notice for a contempt hearing to be held on Monday, July 7, 1975, and the court advised the defendants that on July 7, 1975, it would hear any motions or evidence which the defendants desired to offer. Prior to the contempt hearing on July 7, 1975, the defendants filed several motions, viz.: motion to dismiss the complaint, motion to dissolve the injunction, motion to quash service and demand for jury trial (PA 104). These motions likewise all constituted general appearances.

On July 7, 1975, and prior to adjudication of contempt, considerable evidence and testimony was taken. In fact, the respondents, including the State of Florida, offered virtually the same evidence that had been previously of-

fered on July 3, 1975. Petitioners' counsel not only examined and cross examined the plaintiff's witnesses, but offered testimony on their own behalf. It was only after that evidentiary hearing had been concluded and the court reiterated its order of July 3, 1975, that the contempt proceedings were had.

As above pointed out the dog owners were immediately called and acknowledged that they had had notice of the order of July 3, 1975, and that they had willfully and deliberately violated same by refusing to file with the racing secretary their dogs for racing on July 4, 1975. That contempt order (RA 51) recites in part as follows:

> "The Court entered its order dated July 3, 1975, ordering and directing the defendants and each of them to forthwith comply with their individual contracts to furnish dogs to plaintiff for the conduct of its racing meet. The Court considered testimony and the evidence on the issue of whether the defendants had complied with the order of this Court of July 3, 1975. The Court finds and decrees as follows:
>
> "1. That all of the defendants named in the first paragraph admitted in open court that they had not complied with the order of this Court and that they had not furnished dogs to the plaintiff for the racing meet in accordance with the contracts between each of the defendants and plaintiff. The Court heard evidence from the defendants concerning their reasons for not obeying the Court's order and any mitigating circumstances which may affect the sentence of the Court.
>
> "2. That the defendants named in the first paragraph each wilfully failed and refused to obey the order of this Court of July 3, 1975. The reasons advanced by each of the defendants for not obeying this Court's order are deemed insufficient."



Petitioners' claim of lack of jurisdiction and the voidness of the order of July 3, 1975, is but a "red herring" that has been injected out of desperation. The petitioners were merely playing games with the court to further delay the opening of the race meet.

Petitioners' contention that the court lacked jurisdiction and that the injunctive order of July 3, 1975, was void rather than voidable because of the sham removal to the federal district court, was answered by the opinion of the Supreme Court of Florida in *Wilson* v. *Sandstrom*, 317 So. 2d 372 (1975), Text 741, with a quotation from *76 C.J.S.* (Removal of Causes), § 239.

Furthermore, all of the testimony and evidence presented on July 3, 1975, was again presented at the July 7, 1975, hearing in which petitioners' counsel participated, cross examined and offered evidence in their own behalf.

The basic question was, did they have notice of the court's order of July 3, 1975, and willfully refuse to obey it. This the dog owners readily admitted.

Petitioners recognize that injunctive orders must be obeyed, even though erroneous or improper, until such time as they are reversed by orderly and proper proceedings. *Maness* v. *Meyers*, 419 U.S. 449. However, they say that the trial court lacked jurisdiction solely upon the abortive petition for removal. They cite no cases in support of their petition other than *In re Petition of Green*, 369 U.S. 689. In citing and quoting from this case petitioners overlook informing the Court that this was a matter which was by statute exclusively within the jurisdiction of the National Labor Relations Board.

There can be no question under Florida law as to the jurisdiction of the circuit courts of the State of Florida over the subject matter or its authority to issue temporary injunctions with or without notice. This applies equally to temporary mandatory injunctions. *Kellerman* v. *Chase & Co.*, 135 So. 127 (Fla. 1931). (See Supreme Court of Florida opinion in the instant case, 317 So. 2d 732, Text 736.)

In *Hill, Darlington & Grimm* v. *Duggar*, 177 So. 2d 734 (DCA 2d 1965), the court stated the rule regarding the conduct of parties relating to injunctive orders when it quoted from *Ex Parte Lennon*, 166 U.S. 548, 17 S. Ct. 658, 41 L. Ed. 1110, as follows:

> " 'The facts that petitioner was not a party to such suit, nor served with process of subpoena, nor had notice of the application made by the complainant for the mandatory injunction, nor was served by the officers of the court with such injunction, are immaterial so long as it was made to appear that he had notice of the issuing of an injunction by the court. To render a person amenable to an injunction, it is neither necessary that he should have been a party to the suit in which the injunction was issued, nor to have been actually served with a copy of it, so long as he appears to have had actual notice. * * *' "

When petitioners willfully violated the terms of the injunctive order of July 3, 1975, rather than comply with the terms thereof, they were cited for contempt. After hearing the testimony and ascertaining by the petitioners' own admissions that they had full knowledge of the court's injunctive order of July 3, 1975 and willfully disobeyed said order, the court was left with no alternative but to hold the petitioners in contempt of court. As the Supreme Court of Florida said in *Seaboard Air Line Ry. Co.* v. *Tampa Southern R. Co.*, 135 So. 529 (Fla. 1931):



> "For, while the power to punish for contempt of a civil or criminal nature is to be sparingly used, it is a necessary and integral part of the judicial power, and is abolutely essential to the performance of the duties imposed by law upon courts of equity. Without it, such courts are mere boards of arbitration whose judgments and decrees are only advisory.
>
> "If a party can make himself a judge of the validity of orders which have been issued for the protection of property rights, and by his own act of disobedience can set them aside, then are the courts impotent, and what the Constitution of the state ordains as the judicial power becomes a mere mockery."

The court further said:

> "Such an injunction should be obeyed as such as long as it is in force, and the court should not permit a party charged with violating it to say in defense that the equities of the case were with the violator, and that the court was wrong in entering the injunction in the first place."

See also: *State ex rel. Buckner et al.* v. *Culbreath*, 3 So. 2d 380 (Fla. 1941).

In support of the position that the incarceration for contempt violated the Thirteenth Amendment, petitioners rely entirely upon *Pollack* v. *Williams*, 322 U.S. 4 (1944). That case is nowise in point as it involved a conviction under a Florida statute which made it a fraud to obtain money in advance for the performance of services and failure to perform. That has nothing whatever to do with incarceration for contempt of court. The power to incar-

cerate for contempt of court has long been established as a necessary adjunct to the court's power. *Ex parte Earman*, 95 So. 761 (Fla. 1923). Without this power the dignity and integrity of the court could not be maintained and its authority would become a hollow shell and reduce the court to the status of an arbitration board.

Petitioners then aver that the civil rights cases have something to do with the situation. How or in what manner petitioners' civil rights could be violated by an order of court which decreed specific performance of a contract voluntarily entered into is difficult to fathom.

Petitioners also urge as a ground for the granting of the petition that the court refused to hear their defenses. It is significant that they wholly fail to point out what defenses they tendered and the court refused to hear. Petitioners were given every opportunity to present any and all defenses, both to the issuance of the temporary injunction as well as the contempt proceeding. At the first hearing they elected to stand upon the abortive removal and refused to participate in the proceedings. Upon remand and at the hearing of July 7, 1975, they were again afforded every opportunity, and at that time they did participate in all phases of the proceeding. The defenses which petitioners are talking about did not relate to the issue before the court, viz.: the right to temporary mandatory injunction or the contempt proceedings. The claimed defenses related to the case on the merits as is evidenced by the record (PA 104) and a reading of the opinion of the Supreme Court of Florida. There was some intimation that the petitioners were deprived of their constitutional rights because the court refused to give them a jury trial on the contempt.

There is no constitutional right to a jury trial in a contempt proceeding. In fact, statutes purporting to confer



the right to jury trial in contempt proceedings have been adjudicated unconstitutional on the ground that they interfered with inherent power of the court in contempt proceedings. *17 Am. Jur. 2d* (Contempt) 64, § 64.

**B. The Opinion and Judgment of the Supreme Court of Florida Discharging the Writ of Habeas Corpus Previously Issued Without Notice Did Not Constitute a Final Judgment and Is Not Reviewable by Certiorari.**

The Supreme Court of Florida in *Wilson* v. *Sandstrom*, 317 So. 2d 732, discharged a writ of habeas corpus which it had previously issued without notice. That opinion and judgment of the state court is not final for the purposes of a review by certiorari, and this Court will only review on certiorari final judgments or decrees. *32 Am. Jur. 2d* (Federal Practice and Procedure) 709, § 245, and authorities cited. The fact that the judgment is not final is further evidenced by charges made in the petition (page 13) wherein it is said:

> "* * * but the Court apparently recanted much, if not all, its decision by saying that its July 21st opinion was 'not res judicata' and preserving to petitioners the theoretical future right to litigate all issues, including even damages for wrongful issuance of injunction."

A judgment which involves a new trial or further proceedings in the lower court is not a final judgment of the appellate court and is, therefore, not reviewable by the Supreme Court. *North Dakota State Board of Pharmacy* v. *Snyders Drug Stores, Inc.*, 414 U.S. 156; *Urie* v. *Thompson*, 337 U.S. 163; Annotations: 89 L. Ed. 1188; 97 L. Ed. 212.

Since the order sought to be reviewed is not final, the court lacks jurisdiction to review it on certiorari and the petition should be denied.

Civil contempt orders are not appealable. *In re Manufacturers Trading Corporation* (C.C.A. 6, 1952), 194 F. 2d 948. It follows that if a civil contempt order is not appealable under Rule 54(a), it is not reviewable by certiorari.

**C. The Opinion and Order of the Supreme Court of Florida Discharging the Writ of Habeas Corpus Was a Discretionary Action and This Court Will Not As a Matter of Law Review Discretionary Orders on Certiorari.**

A judgment or order in habeas corpus proceedings is reviewable only if expressly provided for by statute and it is generally held that no appeal or writ of error will be allowed from a judgment remanding or discharging the prisoner in habeas corpus proceedings. *Wilkinson* v. *Lee*, 138 Ga. 360, 75 S. E. 477.

In *39 Am. Jur. 2d* 299, § 168, it is said:

> "The general rule that the action of the trial court as to matters within its judicial discretion will not be disturbed unless there is a clear abuse thereof applies to actions and rulings on questions of law and fact in habeas corpus proceedings."

The principle that decisions involving contempt of court are not appealable is extended to a writ of habeas corpus in contempt cases. *39 Am. Jur. 2d* (Habeas Corpus) 302, § 172.

The actions of the trial court with respect to issuance, denial or discharge of a writ of habeas corpus are matters of discretion and will not be disturbed in the absence of a clear abuse of such discretion.



Traditionally, appellate courts will not review or disturb discretionary rulings of the lower courts. *Brown* v. *United States*, 359 U.S. 41; *36 C.J.S.* (Federal Courts) 671, § 204(21).

**D. The Order of the Supreme Court of Florida Discharging the Writ of Habeas Corpus Has Become Moot and, Therefore, Is Not Reviewable on Certiorari.**

The law is well established that this Court will not review, deal with or pass upon moot, abstract or academic questions. *32 Am. Jur. 2d* (Federal Practice and Procedure) 760, § 294, and authorities cited. A real or substantial federal question is essential to the jurisdiction of the United States Supreme Court over judgments of a supreme court of a state or where it is most conjectural whether a party has been deprived of any constitutional right or where the question has become moot.

In the instant case and following the decision of the Supreme Court of Florida, the petitioners elected to resume racing rather than face incarceration under the order which found them guilty of contempt. Since incarceration for contempt is no longer an issue, the basic question presented is now moot.

In referring to the opinion of the Supreme Court of Florida, on rehearing petitioners say:

> "Just what 'main proceeding' the court thought remained is unknown. This case, filed on June 30, 1975, was over on July 29, 1975."

The above statement is wholly incorrect as the main case is not only still pending, but petitioners have filed counterclaims and crossclaims and brought in third parties

defendant. This could be readily shown if it were to be permissible to bring to this Court matters which are dehors the record.

## CONCLUSION

The short incarceration for contempt of court in no-wise involved any involuntary servitude or violation of the Thirteenth Amendment. There is no substantial federal question presented and the interlocutory order of the Supreme Court of Florida is not reviewable by certiorari as a matter of law, and the petition for certiorari should be denied.

Respectfully submitted,

MARION E. SIBLEY

HERBERT L. NADEAU

SIBLEY, GIBLIN, LEVENSON & WARD
P.O. Box 390360
Miami Beach, Florida 33139

and

PATTON, KANNER, NADEAU, SEGAL,
ZELLER & LAPORTE
150 S. E. 2nd Avenue
Miami, Florida 33131

*Attorneys for West Flagler Associates, Ltd.*



## CERTIFICATE OF MAILING

I HEREBY CERTIFY that three copies of the foregoing brief of West Flagler Associates, Ltd. in opposition to petition for writ of certiorari to the Supreme Court of Florida were mailed to Pettigrew & Bailey, Attorneys for Petitioners, 1820 One Biscayne Tower, Miami, Florida 33131; Hon. Stuart Simon, County Attorney, 1626 Courthouse, Miami, Florida 33130; and Hon. Robert L. Shevin, Attorney General, The Capitol, Tallahassee, Florida 32304, this ..... day of ....., 1975.

HERBERT L. NADEAU

## APPENDIX

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT IN AND FOR DADE COUNTY, FLORIDA GENERAL JURISDICTION DIVISION

No. 76-20902

WEST FLAGLER ASSOCIATES, LTD., a limited partnership organized and existing under the laws of the State of Florida

Plaintiff

vs.

FLORIDA GREYHOUND OWNERS & BREEDERS ASSOCIATION, INC., a Florida corporation, etc. et al

Defendants

### EXCERPTS FROM SWORN COMPLAINT

1. The plaintiff is the holder of a pari-mutuel permit issued by the State of Florida pursuant to a referendum in the County of Dade, and licensed by the Department of Business Regulation of the State of Florida, under and pursuant to the Florida Statutes, to conduct greyhound racing meets during the calendar years 1975, 1976 and 1977 at its track in Miami, Florida.

2. The plaintiff has been assigned racing dates by the Department of Business Regulation and is licensed to operate and conduct said meet from July 3, 1975, through September 4, 1975, and from November 7, 1975, to January 9, 1976, and from May 1, 1976, to July 2, 1976. Pursuant to the contract hereinafter referred to and in accordance with the prior course of dealings between the plaintiff

and the defendant contract holders, actual notice has been given to said contract holders to present their racing dogs for schooling on June 23, 1975.

3. The following named defendants are not employees of the plaintiff but are severally independent contractors who have contracts with the plaintiff to supply dogs for the second half of the 1975 greyhound racing season of the plaintiff commencing July 3, 1975, and ending September 4, 1975:

B. W. Bashaway

Chester Culbreath

Pat Dalton

Earl Hall

C. O. Means

Duane Randle

Joseph Villella

Paul Haenel

Joe LaCroix

Wayne Strong

The contracts between the plaintiff and these named defendants are all identical and no purpose would be served by attaching all of the contracts. A copy of the contract with one of the named defendants, B. W. Bashaway, is attached hereto as Exhibit A, and the contracts between the plaintiff and the remaining above named defendants will be produced in court.

4. The following named defendants are not employees of plaintiff but are severally independent contractors who have contracts with the plaintiff to supply dogs for the second half of the greyhound racing season for the period



commencing July 3, 1975, and their contracts expire on September 4, 1976:

George Alder (Jordan-Alder Kennel)

Earl Baxter

Woodrow Blackwell

Lester Cole

C. R. Holzschuher

Al Moskovits (Medley Farm, Inc.)

Ray Randle

F. B. Stutz

James L. Frey (White Shadows Kennel)

Jack Wilson

Francis Fulginiti

The contracts between the plaintiff and these named defendants are all identical and no purpose would be served by attaching all of the contracts. A copy of the contract with one of the named defendants, George Alder, is attached hereto as Exhibit B, and the contracts between the plaintiff and the remaining above named defendants will be produced in court.

5. The following named defendants are not employees of plaintiff but are severally independent contractors who have contracts with the plaintiff to supply dogs for the second half of the greyhound racing season for the period commencing July 3, 1975, and their contracts expire on September 4, 1977:

Richard F. Andrews

Carroll Blair (C.C. and C.E. Blair Kennel)

Paul J. Discolo

J. W. Ewalt

Bradford Cochrane (Ivory Tower Kennel)

Dick Jordan

Charles M. Leavy

Steven Merlock (M-F Kennel)

J. E. O'Donnell

These contracts between the plaintiff and these named defendants are all identical and no purpose would be served by attaching all of the contracts. A copy of the contract with one of the named defendants, Richard F. Andrews, is attached hereto as Exhibit C. and the contracts between the plaintiff and the remaining above named defendants will be produced in court.

6. Each of said contracts obligates the defendants to supply to the track of the plaintiff in Miami, Florida, Flagler Kennel Club, certain racing greyhounds which are required for the conduct of races at said track under the rules and regulations of the Division of Pari-Mutuel Wagering of the Department of Business Regulation.

7. In consideration of the contractual obligations of the defendants under their contracts, the plaintiff granted exclusive right to the defendant dog owners to race their dogs at West Flagler in competition which is limited only to other dog owners similarly under contract, and agreed to furnish purses for the benefit of the defendants. The amount of the purses as paid during the year immediately preceding was the sum of $1,695,000.00. These purses are divided among the individual defendants in the manner that is specified in the contract.

9. In recognition of the importance to the plaintiff and the State of Florida in making dogs available for



racing as provided for in said contracts, the following provision is in each of said contracts:

> "7. Throughout each entire racing meeting within the period of time covered by this contract the KENNEL OWNER and any and all persons acting under his authority shall fully comply with the decisions of the Racing Officials, and all of the rules and regulations of the TRACT OPERATOR, together with the rules and regulations of the State agency regulating Greyhound Racing, and also all the laws of the State of Florida, and they and each of them will not in any manner do any act or thing detrimental to the best interests of the TRACT OPERATOR and Greyhound Racing. Specifically, the KENNEL OWNER agrees for himself and all acting by or under his authority, directly or indirectly, that they will not participate in, aid, encourage, or do any act or thing to impede, delay, interrupt, disrupt, or bring about a temporary or permanent cessation or suspension of racing during any racing meeting within the period of time covered by this contract, and that they, and each of them, will not molest, abuse, insult, impede, obstruct, interfere with or interrupt any agent, servant, or employee of the TRACK OPERATOR and of any Greyhound Owner or other persons participating in any way in any racing meeting of TRACK OPERATOR during the life of this contract either at the racing plant of the TRACK OPERATOR, or at the places of business or homes of such other person or persons or at any time or place while such other person or persons are in transit between their places of business and homes and the racing plant of TRACK OPERATOR."

12. The State of Florida is a third party beneficiary of the individual contracts between the plaintiff and the defendants and has a decided interest in the conduct of the race meets and the mutuel handle by reason of the fact that the State of Florida by law and regulation taxes and receives seven per cent of the pari-mutuel pool generated from public betting at the plaintiff's dog track, which percentage constitutes a signficant source of revenue to the State of Florida and its citizens, thus making the subject of this suit a matter of great public importance. The seven per cent paid to the State of Florida by the plaintiff last year amounted to in excess of $5,700,000.00 which is approximately 13 per cent of the total revenue from dog track pari-mutuel operations generated in the State of Florida.

13. Rule 7E-2.26(1) of the Department of Business Regulation governing greyhound racing provides as follows:

> "Greyhounds must be properly schooled and must, in the opinion of the Judges, be sufficiently experienced before they can be entered or started. Any greyhound that has not been entered for a period of six (6) racing days, and/or has not been raced for a period of ten (10) racing days or more, must be schooled at least once at its racing weight before being eligible for entry. No hand schooling will be considered official.

14. Notwithstanding the obligations of each of said individual defendants having separate and independent contracts with the plaintiff, the defendants have wilfully and wantonly violated their contracts by not presenting their dogs for schooling on June 28, 1975, as required by the aforementioned rule and paragraph 3 of their con-



tracts. On June 10, 1975, said defendants sent to the plaintiff a notice a copy of which is attached hereto as Exhibit D, which said notice in nowise complies with the rule and is silent as to why the defendants would not present their dogs for schooling on June 28, 1975. The defendants were well aware that their individual and collective breach of their contracts will prevent plaintiff from conducting its racing program under its license from the State of Florida and from fulfilling its obligations to the Department of Business Regulation.

16. Plaintiff alleges upon information and belief that a large number of the individual defendants are members of FGOBA and all are members of NGA, and that said corporation, association and members acting collectively, and through its officers, have conspired to induce each of the individual defendants to violate their respective contracts with the plaintiff and have induced the individual defendants to boycott plaintiff's track and refuse to furnish dogs for schooling as required by the rules, and that they have refused to present their dogs for schooling as required on June 28, 1975, and will refuse to supply dogs for the meet commencing July 3, 1975. The defendants, FGOBA and NGA through their officers and directors have tortiously sought to and have interfered with the performance by the dog kennels who are in contract with the plaintiff of their obligations and duties under their valid existing contracts.

17. The defendants individually and collectively and the said corporation and unincorporated association have already refused to furnish dogs to the dog track in Monticello, Florida, and the track in Monticello has obtained an injunction which ordered the defendants holding contracts to perform under the terms of those contracts. A copy of that injunctive order is attached hereto as Exhibit

E. The kennel owners who refused to school their dogs at Monticello have been adjudicated in contempt of the Circuit Court of Leon County, Florida, for failure to comply with the order of the court.

19. As a result of the wilful and wanton violation of contracts by the individual defendants, the boycott and conspiracy between them and FGOBA and NGA and other dog owners who are members of said corporation or association or subject to their control and inducement, plaintiff will not be able to conduct its race meet scheduled to begin July 3, 1975, and plaintiff has no reasonable expectation that any such program can be conducted for the balance of the current race meet or any extension or renewal thereof. The defendants are required by their contracts to supply to the plaintiff a chattel of unusual and unique character; namely, racing greyhounds which are not readily obtainable in the open market; and therefore, plaintiff would be unable to obtain contracts from other persons to supply racing greyhounds. The greyhounds to be furnished by the kennel owners have been trained to perform before the public and are trained to chase a mechanical lure. The greyhounds are required to be registered and such registration is not obtainable unless the pedigree of the greyhounds complies with all the standards fixed by the American Kennel Club and/or the National Greyhound Association. The American Kennel Club does not register racing greyhounds. NGA will not register racing greyhounds unless the dog is owned by an NGA member. NGA is the principal conspirator in inducing certain of the defendants from performing their contracts. The plaintiff has relied upon the contracts with the kennel owners above named to furnish to it the number and character of greyhounds described in said contracts. The operation of the plaintiff's business de-



pends upon the performance of said contracts by said defendant kennel owners. Their failure to comply with their agreements causes the plaintiff the loss of its business and denies to the plaintiff the right to conduct said business as authorized by the Board of Business Regulation and by the State of Florida. There are 186 different kennels operating in the State of Florida. Through their membership in NGA and interlocking membership in FGOBA the refusal of the defendants to perform their service makes impossible the providing of greyhound race dogs at West Flagler Kennel Club for the performance of the race meet as authorized and directed by the State of Florida.

20. The rules of the Board of Business Regulation require that the greyhounds to be supplied by the kennel owners under their contracts be registered with the National Greyhound Association or the American Kennel Club. The said contracts require the defendant kennel owners to deliver to the plaintiff the registration papers of each greyhound contracted for under the terms of said agreements. The greyhounds forming the subject matter of said contracts are all kenneled in Dade County, Florida, and in fact many of the greyhounds under contract are kenneled at property owned jointly by the four local greyhound track operators. Many of these greyhounds are recognized as outstanding stars in the greyhound racing field and are famous for their accomplishments on the race track.

21. In addition to the injury suffered by plaintiff, others will suffer irreparable injury if the above defendants are not enjoined from further contract violations. It is presently impossible to establish the full amount of damage that would flow therefrom. Among other things, plaintiff employs a substantial labor force in Dade County, Florida, provides entertainment for thousands of

Florida residents and generates a significant amount of tax money for the State of Florida. Properly schooled racing dogs are absolutely essential to the conduct of the race meet, and unless the above defendants are enjoined from further contract violations, great and irreparable harm will be done to the public welfare. This great harm could not properly be compensated by an award of damages.

22. Each day upon which the plaintiff is deprived of racing greyhounds for the conduct of its racing programs plaintiff suffers irreparable damage because each day lost can never be replaced in view of the competition and the date assignments by the Department of Business Regulation between its race meets and the race meets conducted by the other greyhound race tracks in the Dade and Broward County areas. The nature of the business is such that the longer the racing program is inoperative, the greater harm to plaintiff and less likelihood that it can ever be remedied.

23. Plaintiff has no adequate remedy at law as only specific performance by the defendants of their duties and obligations to the plaintiff under the contracts by supplying greyhounds for its racing programs will constitute a full and adequate remedy.

24. The dogs under contract at West Flagler are currently being kenneled in Dade County, Florida and are within the jurisdiction of this Court. A list of the dogs by kennel and name is attached hereto as Exhibit F. Seventeen of the kennels of dogs are at Florida Kennels in Hialeah, and the remaining dogs are in the possession, custody and control of private kennel owners.



(Caption Omitted)

**TEMPORARY INJUNCTION WITHOUT NOTICE**

This cause came on to be heard upon the sworn complaint of the plaintiff which seeks in part a temporary injunction, without notice, enjoining and restraining, until further order of this Court, the defendant greyhound owners and kennel operators from removing from the jurisdiction of this Court any racing greyhounds owned, leased or controlled by the defendant kennel owners and operators, shown on a list thereof in Exhibit F to the complaint, and third parties having custody thereof from delivering or surrendering to the owners or lessees or any agents or representatives of the owners or lessees of any of the dogs in their possession listed in Exhibit F to the complaint, and the Court from the sworn complaint and evidence presented finds and decrees as follows:

1. That the Court has jurisdiction of the subject matter and of the parties and that the injury and damage apprehended as hereinafter set forth and as alleged in the complaint will occur unless an injunction be granted without notice.

2. The contracts required to be performed by the defendants, namely, the supplying of greyhound dogs for the plaintiff's scheduled race meet, involve special and unique chattel and product which cannot be readily supplanted or replaced, and to deny to the plaintiff the relief sought would result in irreparable damage for which the plaintiff has no adequate remedy at law.

3. The plaintiff's application for temporary injunction and apprehension that the defendant kennel owners will remove the racing greyhounds from the jurisdiction of this Court if they were to be given notice of any application for such an injunction or other relief is well founded

and irreparable damage and harm would result if the racing greyhounds were to be removed from the jurisdiction and such injunctive relief is necessary and essential to insure complete relief to the plaintiff.

Accordingly, the defendant greyhound owners and kennel operators enumerated in the complaint are hereby enjoined until further order of the Court from removing from the jurisdiction of this Court any of the dogs owned, leased or controlled by them and enumerated and listed in Exhibit F to the complaint. If any of the dogs listed are not within the custody and control of the defendant greyhound owners, their kennels or officers and agents of said defendants but rather in the possession and custody of third parties, then such third parties having custody and control of such greyhounds and actual notice of this order are enjoined until further order of this Court from delivering and surrendering possession of any of the named dogs to any of the defendants or to any officers, agents or representatives of the defendants or any of them. Likewise the said defendants are enjoined from receiving delivery thereof.

4. This injunctive order shall become effective immediately, provided, however, that the plaintiff is ordered and directed to file with the Clerk of this Court, on or before July 1, 1975, a bond to be approved by the Clerk of this Court with the plaintiff as principal and a surety company qualified to do business in the State of Florida, as surety, payable to the defendants in the penal sum of $5000 and conditioned to pay to the defendants all damages, losses, expenses and charges which the defendants may sustain or may have been put to by reason of the issuance of this temporary mandatory injunction if this temporary injunction is dissolved or the cause dismissed.



5. That service upon Sylvan Holtzman, Attorney at Law, of a copy of this injunctive order and a copy of the complaint shall constitute good and sufficient service of this injunctive order upon all of the defendant dog owners and shall constitute notice to them of the issuance of this injunctive order. Service upon any persons not named as parties defendant herein and who have care, custody or control of any of the dogs enumerated in Exhibit F shall be effected by delivery to them of a copy of this injunctive order.

DONE AND ORDERED at Miami, Dade County, Florida, this 30th day of June, 1975.

s/ Harvie S. Duval
Circuit Judge

UNITED STATES DISTRICT COURT SOUTHERN
DISTRICT OF FLORIDA
MIAMI DIVISION

CASE NO.:

WEST FLAGLER ASSOCIATES, LTD., a Limited Partnership, organized and existing under the laws of the State of Florida,

Plaintiff,

vs.

FLORIDA GREYHOUND OWNERS & BREEDERS ASSOCIATION, INC., a Florida corporation, its officers and directors, MARC HILL, GLENN R. CAMPBELL, JR., CHARLES B. MEDLEN, ARTHUR M. BOBRICK, BILL FOREST, ROBERT F. NIEMEYER, F. B. STUTZ, O. K. DUKE, JR., G. A. ALDERSON, E. L. MOSES, GEORGE J. FULTON, A. L. HAUCK, JAMES L. FREY, H. N. SIMMONS, ROBERT E. MENDHEIM, JAMES T. McKEEHAN, NATIONAL GREYHOUND ASSOCIATION, an unincorporated association, ROBERT E. THOMAS, member, officer and director of NATIONAL GREYHOUND ASSOCIATION, RICHARD F. ANDREWS, B. W. BASHAWAY, EARL BAXTER, WOODROW BLACKWELL, CARROLL BLAIR, LESTER COLE, CHESTER CULBREATH, PAT DALTON, PAUL J. DISCOLO, J. W. EWALT, PAUL HAENEL, EARL HALL, C. R. HOLZSCHUHER, BRADFORD COCHRANE, DICK JORDAN, GEORGE ADLER, JOE LaCROIX, CHARLES M. LEAVY, F. B. STUTZ, D. O. MEANS, AL MOSKOVITS, STEVEN MARLOCK, J. E. O'DONNELL, DUANE RANDLE, RAY RANDLE, WAYNE STRONG, JOSEPH VILLELLA, JAMES E. FREY, JACK WILSON and FRANCIS FULGINITI,

Defendants.



## BOND FOR REMOVAL

KNOW ALL MEN BY THESE PRESENTS, that the Defendants who have been served are held jointly and severally and firmly bound unto Plaintiff in the penal sum of Five Hundred Dollars ($500.00), lawful money of the United States of America.

The obligation of the bond is conditioned on the improper removal of Case No. 75-20902 from the Circuit Court of the Eleventh Judicial Circuit in and for Dade County, Florida, to this Court. If the above case is adjudicated to be non-removable or improperly removed, this bond shall satisfy all duly compensable costs and disbursements. Otherwise, this bond shall be null and void and returned to the makers.

The above named and served Defendants, by their attorneys, Pettigrew and Bailey

By /s/ Bruce W. Greer

Cashier's Check No. 215420 ($500)
Surety

(Caption Omitted)

63-136
660

CITY NATIONAL BANK OF MIAMI

No 215420

MIAMI, FLORIDA July 3, 1975.

PAY TO THE ORDER OF Clerk, United States District Court * * *$500.00

CITY NAT'L BANK $500 AND 00 CTS

CASHIER'S CHECK

Pettigrew & Bailey

Maria G. Bowe
AUTHORIZED SIGNATURE

⑈021542⑈ ⑆0660⑈0436⑆

PURCHASER EXCHANGE $ ISSUED BY _____

**ORDER GRANTING TEMPORARY MANDATORY INJUNCTION**

This cause came on to be heard upon the sworn complaint of the plaintiff for a temporary mandatory injunction after notice to the defendants, and upon consideration of the sworn complaint and the evidence presented to the Court, the Court finds and decrees as follows:

1. That the Court has jurisdiction of the subject matter and of the parties and that the equities are with the plaintiff and against the defendants.

2. That the individual dog owners named in the sworn complaint have written contracts to furnish dogs for the greyhound racing meet scheduled to commence on July 3, 1975, at Flagler Kennel Club and under the terms and provisions of said contracts the defendants are obligated to supply the dogs pursuant to the contracts and not to take any action which would interfere with the conduct of the meet. The State of Florida has a financial interest in the taxes to be derived from the conduct of the scheduled race meet, and is suffering a loss of tax revenue of $64,000.00 per day and for each and every day that the said defendants fail to comply with their contracts. In addition, plaintiff is suffering irreparable damage by reason of its inability to operate its racing program because of the greyhound owners' refusal to perform their contracts, and the economy of this area is materially affected as in excess of 600 employees of the kennel club are suffering a loss of employment.

3. The obligations required to be performed by the defendants, namely, the supply of greyhound dogs for the plaintiff's scheduled race meet, involve special and unique chattels or product which cannot be readily supplanted

or replaced, and to deny to the plaintiff the relief sought would result in irreparable damage for which the plaintiff has no adequate remedy at law. The balance of convenience and the public interest and the irretrievable loss of income from taxation to the State of Florida all dictate that the relief sought should be granted.

4. Plaintiff's application for a temporary mandatory injunction is hereby granted and the individual defendants, Richard F. Andrews, B. W. Bashaway, Earl Baxter, Woodrow Blackwell, Carroll Blair, Lester Cole, .Chester Culbreath, Pat Dalton, Paul J Discolo, J. W. Ewalt, Paul Haenel, Earl Hall, C. R. Holzschuher, Bradford Cochrane, Dick Jordan, George Alder, Joe LaCroix, Charles M. Leavy, F. B. Stutz, C. O. Means, Al Moskovits, Steven Merlock, J. E. O'Donnell, Duane Randle, Ray Randle, Wayne Strong, Joseph Villella, James L. Frey, Jack Wilson and Francis Fulginiti, having contracts with the plaintiff to supply dogs for the meet scheduled to commence on July 3, 1975, are hereby ordered and directed to forthwith comply with said contracts and to furnish dogs to the plaintiff for the conduct of the aforesaid race meet in accordance with the contracts with the plaintiff and with statutes, rules and regulations of the State of Florida governing greyhound racing and pari-mutuel betting.

5. The defendant dog owners named in this order are directed to file with the Racing Secretary of Flagler Kennel Club their entries for the scheduled races on Saturday matinee, July 5, 1975, not later than 10:00 o'clock A. M. on July 4, 1975.

6. In the event that the defendants or any of them do not file their entries for the Saturday matinee for July 5, 1975, by 10:00 o'clock A.M. on July 4, 1975, or, itf, having filed their entries, they fail and refuse to supply their dogs for the Saturday matinee of July 5, 1975, or



any date allocated for racing subsequent to July 5, 1975, then the dogs located and kenneled at the compound of the Florida Kennels, Inc. shall be sequestered and PERRINE PALMER shall take possession and control of said dogs and all trucks and equipment utilized in performing said contracts and shall enter and race said dogs in accordance with this order for the account of the respective defendant owners, and the costs and fees incident to such services shall be assessed against the disobedient parties.

7. It further appearing to the Court that irreparable damage and loss will result not only to the plaintiff but to the State of Florida and the people of Dade County, and such exigencies require and dictate an early disposition of this matter, to that end the defendants are ordered and directed to file their answers to the complaint by July 11, 1975.

8. The defendants, and each of them, are hereby temporarily enjoined and restrained until the further order of this Court from removing any greyhounds now kenneled at the Florida Kennels, Inc. from said location, and the Florida Kennels, Inc. is hereby notified that it shall not permit the removal of any of said greyhounds from said compound.

9. Plaintiff, as principal, and a surety company, authorized to do business in the State of Florida, as surety, shall file with the Clerk of this Court as soon as the Clerk's office is open for business on Monday, July 7, 1975, a bond to be approved by the Clerk of this Court in the sum of $25,000.00, conditioned to pay to the defendants all damages, losses, expenses and charges which the defendants may sustain by reason of the issuance of this temporary mandatory injunction if this injunction is dissolved or the complaint dismissed.

DONE AND ORDERED at Miami, Dade County, Florida, this 3 day of July, 1975 at 6:10 P.M.

s/ Harvie S. DuVal
Circuit Judge

(Circuit Court Caption Omitted)

## EXCERPTS FROM TRANSCRIPT OF TESTIMONY OF JULY 7, 1975

(Tr. 8-12)

The Clerk: Is the Florida Greyhound Owners & Breeders Association represented?

Mr. Fulton: Yes.

The Court: What is your name, sir?

Mr. Fulton: George Fulton, F-u-l-t-o-n.

Mr. Pettigrew: Your Honor, for clarification, the names that I have read to your Honor refer to those in the contempt notice and not the Breeders Association, their directors or the National—

The Court: I understand.

The Clerk: Marc Hill?

Arthur Bobrick?

Bill Forrest?

Glenn R. Campbell, Jr.?

Charles B. Medlen?

The Court: Gentlemen, let me suggest this. If any of these names called are here and do not answer, you will be in contempt of Court. Now do not sit there idly with your teeth closed if you are here.

The Clerk: Robert F. Niemeyer?

Mr. Niemeyer: Present.

The Clerk: F. B. Stutz?

Mr. Stutz: Here.



The Clerk: O. K. Duke, Jr.?

G. A. Alderson?

The Court: Put a check by the ones that do not answer or the other way around, whichever way you want to do it.

The Clerk: E. L. Moses?

George J. Fulton?

Mr. Fulton: Here.

The Clerk: A. L. Hauck?

James L. Frey?

Mr. Frey: Present.

The Clerk: H. N. Simmons?

Robert E. Mendheim?

James E. McKeehan?

National Greyhound Association, an unincorporated association?

Robert E. Thomas?

National Greyhound Association?

Richard F. Andrews?

Mr. Andrews: Here.

The Clerk: B. W. Bashoway?

Mr. Bashoway: Here.

The Clerk: Earl Baxter?

Woodrow Blackwell?

Mr. Blackwell: Here.

The Clerk: Carroll Blair?

Lester Cole?

Mr. Cole: Here.

The Clerk: Chester Culbreath?

Mr. Culbreath: Here.

The Clerk: Pat Dalton?

Mr. Dalton: Present.

The Clerk: Paul Discolo?

Mr. Discolo: Here.

The Clerk: J. W. Ewalt?

Mr. Ewalt: Present.
The Clerk: Paul Hanel?
Mr. Haenel: Present.
The Clerk: Earl Hall?
Mr. Hall: Present.
The Clerk: C. R. Holzschurer?
Mr. Holzschurer: Here.
The Clerk: Bradford Cochrane?
Mr. Cochrane: Here.
The Clerk: Dick Jordan?
Mr. Jordan: Present.
The Clerk: George Alder?
Mr. Alder: Here.
The Clerk: Joe LaCroix?
Charles M. Leavy?
Mr. Leavy: Here.
The Clerk: F. B. Stutz?
Mr. Stutz: Here.
The Clerk: C. O. Means?
Mr. Means: Here.
The Clerk: Al Moskovits?
Mr. Moskovits: Here.
The Clerk: Steven Merlock?
Mr. Merlock: Here.
The Clerk: J. E. O'Donnell?
Mr. O'Donnell: Present.
The Clerk: Duane Randle?
Ray Randle?
Wayne Strong?
Mr. Strong: Present.
The Clerk: Joseph Villella?
Mr. Villella: Here.
The Clerk: James L. Frey?
Mr. Frey: Present.
The Clerk: Jack Wilson?



Mr. Wilson: Here.
The Clerk: Francis Fulginiti?
Mr. Fulginiti: Here.
The Clerk: That is all, Judge.

F. B. STUTZ (Tr. 217, 218)

Q. The opening night of July 3rd. Did you present the Racing Secretary with the names of the dogs you had ready to run on that occasion?

A. No, sir, I did not.

Q. Did you submit on July 4th, prior to 10 o'clock a.m., the names of the dogs to be run on July 5th?

A. No, sir.

Q. Have you submitted the names of or have you submitted any dogs for running on either July 3, 4, or 5?

A. No, sir.

* * *

Q. Well the court had directed you to, did it not?
A. Yes, sir.
Q. You disobeyed that order, did you not?
A. Yes, sir, in that sense.
Q. Did you do it willfully?
A. Yes, sir.

JAMES L. FREY (Tr. 229, 230)

Q. Did you submit your individual entries for the race program scheduled to be run on July 3, 1975?

A. No, I did not.

Q. Did you submit dogs on July 3rd to race on the night of July 3rd at West Flagler Kennel Club?

A. No.

Q. Did you submit entries on or before July 4th for the race schedule for July 5, 1975?

A. No, I did not.

Q. Did you submit your dogs at the track on July 4th to run on July 4th?

A. No.

Q. Did you submit your dogs for racing on July 5th?

A. No, sir.

Q. Did you have knowledge of the order of this Court of July 3rd directing you to submit your entries before 10 o'clock on July 4th and to submit your dogs for racing on July 5th at the matinee?

A. Yes, I did.

Q. Did you obey that order?

A. No, I did not.

CHARLES M. LEAVY (Tr. 260, 261)

By Mr. Patton:

Q. Did you furnish to West Flagler Kennel Club, Mr. Leavy, your list of dogs in early June to run at the meeting beginning July 3, 1975?

A. Yes, I did.

Q. Did you present your dogs for schooling on the evening of July 28, 1975?

A. No, I did not.

Q. Did you submit your dogs or the entries of the list of dogs to race as scheduled to be held on July 3, 1975?

A. No, I did not.

Q. Did you submit the entries on the morning of July 4th for 10 a.m. for the matinee races to begin in the afternoon of July 5, 1975?

A. No, I did not.

Q. Did you submit your dogs for racing on any of the events on either July 3rd, 4th, or 5th?

A. No, I did not, sir.



Q. Did you have knowledge of the Court's order of July 3, 1975, directing you to submit your entries by 10 o'clock on July 4th and to submit your dogs to race for the matinee on July 5th?

A. Yes, sir.

* * *

The Witness: I refused to obey the order. I had no deliberation or intent or maliciousness involved.

WAYNE STRONG (Tr. 271, 272)

By Mr. Patton:

Q. Mr. Strong, state your name.

A. Full name, Harold Wayne Strong.

Q. Are you one of the individuals who has a contract with West Flagler, which has been identified as Exhibit 1?

A. Yes, sir.

Q. Did you furnish to West Flagler Kennel Club a list of your dogs in early June to run for the season beginning July 3, 1975?

A. Yes, sir.

Q. Did you present your dogs for schooling on June 28, 1975?

A. No, sir.

Q. Did you present your dogs or your list of dogs for entries for the race scheduled to begin July 3, 1975?

A. No, sir.

Q. Did you present your dogs for racing on the evening of July 3, 1975?

A. No, sir.

Q. Did you submit your list of entries of the dogs for racing to begin—to be held on the matinee of July 5th by 10 o'clock a.m. on July 4th?

A. No, sir.

Q. Did you submit your dogs for racing on either of the three days, "June" 3rd, "June" 4th, or "June" 5th of 1975?

A. No, sir.

Q. Did you willfully and deliberately refuse to—Wait —Did you have knowledge of the Court's order of June 3, 1975, ordering you to submit your entries by 10 o'clock on July 4th for the matinee on July 5th of '75?

A. Yes sir.

Q. Did you willfully refuse to obey that order?

A. Yes, sir.

Mr. Patton: That is all.

GEORGE ALDER (Tr. 299)

Q. Did you submit your dogs for racing on the night of July 3, 1975?

A. I did not.

Q. Did you submit your dogs for racing on the night of July 3, 1975?

A. I did not.

Q. Did you submit entries prior to the deadline as stated of 10 o'clock on July 4th for the races on July 5th?

A. I did not.

Q. Did you have knowledge of the court's order of "June" 3, 1975, which directed that you should comply with your contract and, secondly, that you would submit—that you submit your entries by 10 o'clock on July 4th for the races for the matinee of July 5, 1975?

A. I did receive it.

Q. Did you willfully refuse to obey that order?

A. I did.

Mr. Patton: That is all.



(Circuit Court Caption Omitted)

**CONTEMPT ORDER**

This cause coming on to be heard upon the Contempt Notice filed by the plaintiff on July 5, 1975, and served upon the attorneys for the defendants on said date, and the defendants, Jack Wilson, Pat Dalton, C. R. Holzschuher, Lester Cole, Charles M. Leavy, F. B. Stutz, Wayne Strong, Woodrow Blackwell, James L. Frey, George Alder, Dick Jordan, Richard F. Andrews, Chester Culbreath, J. E. O'Donnell, B. W. Bashaway, Paul Haenel, Earl Hall, Al Moskovits, Stephen Merlock, Frances Fulginiti, C. O. Means, Paul Discolo and J. W. Ewalt, were personally before this Court represented by their attorneys, Sylvan Holtzman and Richard Pettigrew.

This Court entered its order dated July 3, 1975, ordering and directing the defendants and each of them to forthwith comply with their individual contracts to furnish dogs to plaintiff for the conduct of its racing meet. The Court considered testimony and the evidence on the issue of whether the defendants had complied with the order of this Court of July 3, 1975. The Court finds and decrees as follows:

1. That all of the defendants named in the first paragraph admitted in open court that they had not complied with the order of this Court and that they had not furnished dogs to the plaintiff for the racing meet in accordance with the contracts between each of the defendants and plaintiff. The Court heard evidence from the defendants concerning their reasons for not obeying the Court's order and any mitigating circumstances which may affect the sentence of the Court.

2. That the defendants named in the first paragraph each wilfully failed and refused to obey the order of this

Court of July 3, 1975. The reasons advanced by each of the defendants for not obeying this Court's order are deemed insufficient.

3. That each of the defendants named in the first paragraph above is hereby adjudged to be in contempt of this Court for his wilful failure to obey the Court's order of July 3, 1975, and for failure to comply with his contract with the plaintiff and each is hereby fined Seventy-Five Hundred Dollars ($7,500.00) for the wilful contempt of the Court's order of July 3, 1975.

4. That upon failure to pay the above said fine by 12:00 Noon on July 8, 1975, each of the said defendants, with the exception of C. O. Means, J. W. Ewalt, Woodrow Blackwell, Chester Culbreath and Al Moskovits, is remanded to the custody of the Sheriff of Dade County, Florida, to be confined in the Dade County jail until the above assessed fine has been paid.

5. That each of said defendants named in the first paragraph is hereby directed to pay a fine of Twenty-Five Hundred Dollars ($2,500.00) per day for each and every racing day hereafter in which he fails to obey the order of this Court of July 3, 1975, and to return his dogs to Flagler Kennel Club for racing as heretofore ordered.

6. That each defendant confined to the county jail by this order may purge himself and may be immediately released from confinement upon the payment of the above said fine, plus any additional fines ordered hereafter to be paid.

7. That the defendants, C. O. Means, Woodrow Blackwell, Chester Culbreath, J. W. Ewalt and Al Moskovits, for reasons of health, are not remanded to the custody of the Sheriff but are directed forthwith to pay said fines,



and failing to do so, said defendants are enjoined and restrained from racing any greyhounds owned by them in the State of Florida.

8. Any defendant may purge himself of this contempt by immediately agreeing to comply with his contract to return his dogs for racing at Flagler Kennel Club prior to confinement. Agreement to comply with the defendant's contract after the commencement of confinement will not purge said defendant of contempt unless paid.

9. The said fine of Seventy-Five Hundred Dollars ($7,500.00) shall be payable to the Clerk of the Circuit Court of Dade County, Florida.

* * *

12. The Court will be in session at 12:00 Noon on each and every day hereafter (except Saturday and Sunday) until further order of this Court, for the purpose of hearing any notice of contempt for failure of said defendants to comply with the order of July 3, 1975.

DONE AND ORDERED at Miami, Dade County, Florida, this 8th day of July, 1975.

s/ Harvie S. DuVal
Circuit Judge

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
THIRD DISTRICT

JULY TERM, A.D. 1975

TUESDAY, JULY 8, 1975

CASE NO. 75-1068

FLORIDA GREYHOUND OWNERS & BREEDERS ASSOCIATION, INC., a Florida corporation, et al.,
Appellants,

vs.

WEST FLAGLER ASSOCIATES, LTD., a Florida limited partnership,
Appellee.

Counsel for appellants having filed in this cause emergency motion to quash and/or stay preliminary mandatory injunctions requiring, *ex parte* and without evidentiary or legal support specific performance of personal service contracts, the emergency being grounded upon the orally announced jailing of defendants for non-adherence to involuntary servitude, and the court having considered same, it is ordered that said motion is denied.

A True Copy

Attest:

William P. Carter
Clerk District Court of
Appeal, Third District
By /s/ (Illegible)
Chief Deputy Clerk

cc: Pettigrew & Bailey
Patton, Kanner, Nadeau, Segal, Zeller & LaPorte
Sibley, Giblin, Levenson & Ward
Stuart Simon
/pld



(Caption Omitted)

WEDNESDAY, JULY 9, 1975

CASE NO. 75-1068

This matter having come on for hearing before the court after notice, on appellants' emergency motion to stay proceedings pending appeal, and the court having considered same, after hearing oral argument of counsel thereon, it is ordered that said motion is hereby denied.

It is further ordered that this appeal shall be advanced in accordance with the agreement of counsel for early disposition and their agreement to submit the appeal upon briefs already filed. The State of Florida is allowed to file a brief on or before July 14, 1975 and appellants are granted to July 16, 1975 to respond to the state's brief. No further oral argument will be allowed.

A True Copy

Attest:

William P. Carter
Clerk District Court of
Appeal, Third District
By /s/ (Illegible)
Chief Deputy Clerk

cc: Pettigrew & Bailey
Sibley, Giblin, Levenson & Ward
Patton, Kanner, Nadeau, Segal,
Zeller & LaPorte
Stuart L. Simon
Robert L. Shevin
Harvie S. DuVal
/h

IN THE SUPREME COURT OF FLORIDA

July term A.D. 1975

Thursday, July 10, 1975

No. 47,674

JACK WILSON, et al
Petitioners

vs.

JACK SANDSTROM, Director, Department
of Corrections and Rehabilitation,
Dade County, Florida
Respondent

Upon consideration of petitioner's motion to release petitioners on recognizance or alternatively motion for bond, said motion is granted and it is

Ordered that petitioners be released upon their own recognizance pending disposition of the cause in this court.

cc Jack Sandstrom
Richard Pettigrew
Harvie DuVal



(Caption omitted)

**WRIT OF HABEAS CORPUS**

In the name and by the State of Florida.

To: Honorable Jack Sandstrom, Director, Department of Correction and Rehabilitation.

Greetings:

Petitioners have filed in this court petitions for writ of habeas corpus charging that they are illegally detained in a prison by you. You are hereby commanded to make return to this writ on or before July 16, 1975, showing lawful cause and authority for the detention and imprisonment of the petitioners and thereafter comply with the order of this court in the matter. Petitioners' reply brief is due July 21, 1975, and it is further ordered that this case is set down for hearing on Monday, July 21, 1975, at 9:30 A.M.

Witness the Hon. James C. Adkins, Chief Justice of the Supreme Court of Florida and sealed in said court at Tallahassee, the Capitol, on this the 10th day of July 1975.

cc Jack Sandstrom
Richard Pettigrew
Harvie DuVal